

# **EXHIBIT 4**

CIV533328  
ORD  
Order  
1505771



FILED  
SAN MATEO COUNTY

NOV 20 2018

By Clerk of the Superior Court  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK INC., et al.

Defendants.

Case No. CIV533328

**ORDER FOR BRIEFING AND STAYING  
SUBMISSION OF UNREDACTED  
COPIES OF SEALED DOCUMENTS**

Assigned for All Purposes to  
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On October 25, 2016, the Court issued a Protective Order pursuant to the stipulation of the parties. Non-party Theodore Kramer is the creator and certified representative of plaintiff SIX4THREE, LLC ("Plaintiff" or "Six4Three") and is therefore bound by the Protective Order. (See Stip. & Prot. Order, issued Oct. 25, 2016, ¶ 4(c).)

Pursuant to CRC Rules 2.550 and 2.551, the Court has granted, in part, and denied, in full or in part, several motions to seal and unseal related to evidence proffered in relation to defendant FACEBOOK, INC.'s ("Defendant" or "Facebook") Special Motion to Strike, filed November 21, 2017, and defendants MARK ZUCKERBERG, CHRISTOPHER COX, JAVIER OLIVAN, SAMUEL LESSIN, MICHAEL VERNAL, and ILYA SUKHAR's (collectively "Individual Defendants") Special Motion to Strike, filed May 3, 2018. (See Am. Order, issued Nov. 1, 2018; Order, issued Nov. 19, 2018.) The Court has ordered stricken certain evidence proffered by Plaintiff.

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1       On November 19, 2018 at 8:12 p.m., the Court received an email from Defendant addressed  
 2 to both the Court and Plaintiff's counsel pertaining to correspondence Defendant received from  
 3 Plaintiff. Defendant's email and attachment are attached as **Exhibit 1** to this Order. Plaintiff attached  
 4 a letter dated and received November 19, 2018 from the United Kingdom, House of Commons,  
 5 Digital, Culture, Media and Sport Committee ("DCMS") requesting Theodore Kramer to submit the  
 6 "[u]nredacted copies of Six4Three's opposition to the anti-SLAPP . . . motion" and "requir[ing] the  
 7 documents by 5 pm [GMT] on Tuesday 20th November 2018" or 9 a.m. PST. (Ex. 1, Pl. Letter, Ex.  
 8 A, p. 1.)

9       On November 20, 2018 at 7:34 a.m., the Court acknowledged receipt of Defendant's email  
 10 and instructed the parties that no documents are to be transmitted or released until further order of  
 11 this Court.

12       On November 20, 2018 at 8:15 a.m., the Court received an email from Plaintiff addressed to  
 13 both the Court and Defendants' counsel pertaining to further correspondence between Plaintiff's  
 14 counsel and DCMS. Plaintiff's email and attachments are attached as **Exhibit 2** to this Order. In its  
 15 response to Plaintiff, DCMS sought "specific clarification as to whether you consider that the  
 16 California order has extra-territorial effect, given that Mr. Kramer and the documents are both in  
 17 the UK at present?"

18       IT IS HEREBY ORDERED as follows:

19       1. No unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to  
 20 Strike or Individual Defendants' Special Motion to Strike shall be transmitted, released or submitted,  
 21 until further order of the Court. Failure to comply will be considered an act of contempt.

22       2. The Court orders briefing on this issue. Plaintiff shall file and electronically serve its brief  
 23 and supporting evidence no later than Monday, November 26, 2018 at 12 p.m. Defendant shall file  
 24 and electronically serve its brief and supporting evidence no later than 11:59:59 p.m. on Wednesday,  
 25 November 28, 2018. Each brief shall be no more than 20 pages in length.

26       3. Both briefs shall address:

27           a. What authority does DCMS have to overrule the Court's orders without first  
 28 seeking relief from the Court?

- 1                   b. What is the legal effect, under both United States and United Kingdom law, of  
2                   the DCMS letter to Mr. Kramer?
  - 3                   c. Is the DCMS letter different than a summons?
  - 4                   d. What issues under the United States Constitution are raised by the DCMS letter?
  - 5                   e. What are the obligations of the Court where a House of Commons committee  
6                   orders the release of documents in contravention to the Court's orders?
  - 7                   f. What are the procedures for Mr. Kramer, who is visiting the United Kingdom on  
8                   business, to respond or object to the DCMS letter demand? (See Ex. 1.)
  - 9                   g. What are the contempt procedures for DCMS for non-compliance by Mr.  
10                  Kramer?
- 11                  4. In addition, Plaintiff's brief and supporting evidence shall address:
- 12                 a. What events or circumstances have given rise to the letter dated November 19,  
13                 2018 from DCMS to Mr. Kramer?
  - 14                 b. What communications has Plaintiff, its counsel, Mr. Kramer, or its other agents  
15                 or representatives had with DCMS or any member of Parliament, including staff,  
16                 prior to issuance of the letter?
  - 17                 c. How was DCMS made aware "that Mr. Kramer and the documents are both in  
18                 the UK at the present"? (See Ex. 2.)
  - 19                 d. What method was employed to serve the DCMS letter on Mr. Kramer?
  - 20                 e. Is Mr. Godkin licensed to practice in the United Kingdom and does he have  
21                 authority to represent Mr. Kramer before DCMS? (See Ex. 2.)
  - 22                 f. Has Mr. Kramer retained counsel in the United Kingdom at any point? If so,  
23                 identify that counsel.
- 24                  5. In addition, Defendant's brief and supporting evidence shall address all of the following:
- 25                 a. Defendant has offices in London. Is Defendant subject to the jurisdiction of  
26                 DCMS?
  - 27                 b. Has DCMS or other committee served a similar demand for unredacted copies of  
28                 sealed documents on Defendant? If so, how has Defendant responded?

6. Any factual assertions shall be supported by competent evidence.
7. Courtesy copies are to be delivered to Department 23 within one day of filing.

IT IS SO ORDERED.

DATED: November 20, 2018

Honorable V. Raymond Swope  
Judge of the Superior Court

## **Exhibit 1**

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**From:** Laura Miller <LMiller@durietangri.com>  
**Sent:** Monday, November 19, 2018 8:12 PM  
**To:** ComplexCivil; Rebecca Huerta  
**Cc:** SERVICE-SIX4THREE; David Godkin; James Kruzer; Stuart Gross  
**Subject:** Six4Three v. Facebook (CIV533328)  
**Attachments:** 2018-11-19 Godkin letter to DT re Order from Parliament.pdf

Ms. Huerta,

I write with an urgent request for an ex parte hearing regarding Six4Three's imminent violation of the protective order. This is in addition but related to Facebook's request for an ex parte from earlier today.

Six4Three's counsel sent us the attached letter this morning at 11:33 a.m., purporting to put Facebook on notice that Six4Three is planning to provide to the Digital, Culture, Media and Sport Committee (the "DCMS Committee") of the UK House of Parliament:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

This is precisely the information that the Court ordered sealed and/or struck in its Order of November 1, 2018. And as the DCMS Committee's letter is neither a subpoena nor a court order in related litigation, Six4Three has no basis to disclose Facebook's confidential information under the Stipulated Protective Order.

We have informed Six4Three of Facebook's position and asked them not to disclose Facebook's confidential information, under both to the Stipulated Protective Order and this Court's Order of November 1, 2018. Six4Three has not provided a response, and may disclose Facebook's confidential information as early as 9 a.m. pacific tomorrow.

Understanding the extraordinary nature of its request, Facebook asks the Court to schedule an ex parte teleconference on this matter as soon as possible. In the event that Six4Three agrees to delay any disclosure until the Court has had an opportunity to address this matter, Facebook requests that this matter proceed along the same briefing schedule as set forth in the Court's email of 3:25 p.m. today regarding Facebook's ex parte application for expedited briefing on a motion for sanctions and contempt related to other violations of the Protective Order.

Best regards,

Laura Miller | Attorney | Durie Tangri LLP | 415-362-6666 | lmiller@durietangri.com



David S. Godkin  
Direct Dial: (617) 307-6110  
godkin@birnbaumgodkin.com

November 19, 2018

**BY EMAIL**

Sonal Mehta, Esq.  
Joshua Lerner, Esq.  
Laura Miller, Esq.  
Durie Tangri  
217 Leidesdorff Street  
San Francisco, CA 94111

*Re: Six4Three, LLC v. Facebook, Inc., et al.*  
California Superior Court, San Mateo  
Case No. Civ 533328

Dear Counsel:

Please be advised that my client's principal, Ted Kramer, received this morning, November 19<sup>th</sup>, 2018, an Order for Documents ("Order," attached hereto as Exhibit A) from the Parliament of the United Kingdom to compel the production of certain documents in our possession, including:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20<sup>th</sup>, 2018 or he may be held in contempt and could face investigation and sanction by Parliament. Mr. Kramer is currently located in the United Kingdom for business meetings this week and is therefore subject to the jurisdiction of Parliament.

Pursuant to the Protective Order entered October 25, 2016 ("Protective Order," attached hereto as Exhibit B), this letter serves as prompt (immediate) notice of the Order as required under Section 16(a) and of 643's intent to cooperate with respect to all reasonable and timely relief Facebook may seek in Parliament, pursuant to Section 16(c).

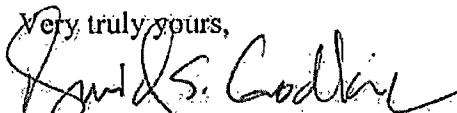
Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

Sonal Mehta, Esq.  
Joshua Lerner, Esq.  
Laura Miller, Esq.  
November 19, 2018  
Page 2



If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order *issued*, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

Protective Order, Section 16. Thus, if Facebook intends to seek relief in the Parliament of the United Kingdom, which is the entity "from which the subpoena or order issued," we request that you please do so prior to the deadline imposed by the Order.

Very truly yours,  
  
David S. Godkin

DSG:cam  
Attachments  
Cc: Catherine Kim, Esq. (By email)  
Service-Six4Three (By email)  
Stuart G. Gross, Esq. (By email)  
James E. Kruzer, Esq. (By email)

# **EXHIBIT A**



# Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA  
Tel 020 7219 6120 Email cmscom@parliament.uk Website [www.parliament.uk/cms](http://www.parliament.uk/cms)

Mr Theodore Kramer  
London Marriott Hotel County Hall  
Westminster Bridge Rd  
London SE1 7PB

19th November 2018

Dear Mr Kramer,

**Order for documents**

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

*Ordered*, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Damian Collins".

DAMIAN COLLINS MP  
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



## Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA  
Tel 020 7219 6120 Email cmscom@parliament.uk Website [www.parliament.uk/cms](http://www.parliament.uk/cms)

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

*Ordered*, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

A handwritten signature in black ink, appearing to read "Damian Collins".

DAMIAN COLLINS MP  
CHAIR, DCMS COMMITTEE

# **EXHIBIT B**

1 Julie E. Schwartz, Bar No. 260624  
2 JSchwartz@perkinscoie.com  
3 PERKINS COIE LLP  
4 3150 Porter Drive  
5 Palo Alto, CA 94304-1212  
6 Telephone: 650.838.4300  
7 Facsimile: 650.838.4350

8  
9 James R. McCullagh, admitted *pro hac vice*  
10 JMcCullagh@perkinscoie.com  
11 PERKINS COIE LLP  
12 1201 Third Avenue, Suite 4900  
13 Seattle, WA 98101-3099  
14 Telephone: 206.359.8000  
15 Facsimile: 206.359.9000

16  
17 Attorneys for Defendant  
18 Facebook, Inc.

19  
20  
21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22  
23 COUNTY OF SAN MATEO

24  
25 SIX4THREE, LLC, a Delaware limited  
liability company,

Case No. CIV533328

26 Plaintiff,

27 STIPULATED [PROPOSED]  
PROTECTIVE ORDER

28 v.

FACEBOOK, INC., a Delaware  
corporation and DOES 1-50, inclusive,

Defendant.

29  
30 In order to protect confidential information obtained by the parties in connection with this  
31 case, the parties, by and through their respective undersigned counsel and subject to the approval  
32 of the Court, hereby agree as follows:

33  
34 **Part One: Use Of Confidential Materials In Discovery**

35 1. Any party or non-party may designate as Confidential Information (by stamping  
36 the relevant page or as otherwise set forth herein) any document or response to discovery which  
37 that party or non-party considers in good faith to contain information involving trade secrets, or

1 confidential business, financial, or personal information, including personal financial information  
 2 about any individual or entity; information regarding any individual's or entity's banking  
 3 relationship with any banking institution, including information regarding financial transactions  
 4 or financial accounts, and any information regarding any individual or entity that is not otherwise  
 5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and  
 6 8.490 of the California Rules of Court or under other provisions of California law. Any party or  
 7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as  
 8 otherwise set forth herein) any document or response to discovery which that party or non-party  
 9 considers in good faith to contain information involving highly sensitive trade secrets or  
 10 confidential business, financial, or personal information, the disclosure of which would result in  
 11 the disclosure of trade secrets or other highly sensitive research, development, production,  
 12 personnel, commercial, market, financial, or business information, or highly sensitive personal  
 13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the  
 14 California Rules of Court or under other provisions of California law. Where a document or  
 15 response consists of more than one page, the first page and each page on which confidential  
 16 information appears shall be so designated.

17       2. A party or non-party may designate information disclosed during a deposition or in  
 18 response to written discovery as Confidential Information or Highly Confidential Information by  
 19 so indicating in said responses or on the record at the deposition and requesting the preparation of  
 20 a separate transcript of such material. In addition, a party or non-party may designate in writing,  
 21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the  
 22 designation is proposed, that specific pages of the transcript and/or specific responses be treated  
 23 as Confidential Information or Highly Confidential Information. Any other party may object to  
 24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the  
 25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has  
 26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.  
 27 After the thirty (30) day period for designation has lapsed, any documents or information  
 28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9  
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies  
3 of the designated material in their possession or control with the specified designation. A party  
4 that makes original documents or materials available for inspection need not designate them as  
5 Confidential Information or Highly Confidential Information until after the inspecting party has  
6 indicated which materials it would like copied and produced. During the inspection and before the  
7 designation and copying, all of the material made available for inspection shall be considered  
8 Highly Confidential Information.

9       3. All Confidential Information or Highly Confidential Information produced or  
10 exchanged in the course of this case (not including information that is publicly available) shall be  
11 used by the party or parties to whom the information is produced solely for the purpose of this  
12 case. Confidential Information or Highly Confidential Information shall not be used for any  
13 commercial competitive, personal, or other purpose. Confidential Information or Highly  
14 Confidential Information must be stored and maintained by a receiving party at a location and in a  
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated  
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only  
17 the Confidential Information or Highly Confidential Information produced or exchanged in this  
18 case, but also (1) any information copied or extracted from or reflecting the Confidential  
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or  
20 compilations of Confidential Information or Highly Confidential Information; and (3) any  
21 testimony, conversations, or presentations by parties or their counsel that might reveal  
22 Confidential Information or Highly Confidential Information. However, the protections  
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any  
24 information that is in the public domain at the time of disclosure to a receiving party or becomes  
25 part of the public domain after its disclosure to a receiving party as a result of publication not  
26 involving a violation of this Stipulated Protective Order, including becoming part of the public  
27 record through trial or otherwise; and (b) any information known to the receiving party prior to  
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained  
2 the information lawfully and under no obligation of confidentiality to the designating party.

3       4. Except with the prior written consent of the other parties, or upon prior order of  
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be  
5 disclosed to any person other than:

- 6             (a) counsel for the respective parties to this litigation, including in-house  
7                     counsel and co-counsel retained for this litigation;
  - 8             (b) employees of such counsel;
  - 9             (c) individual parties or officers or employees of a party, to the extent deemed  
10                 necessary by counsel for the prosecution or defense of this litigation;
  - 11             (d) consultants or expert witnesses retained for the prosecution or defense of  
12                 this litigation, provided that each such person shall execute a copy of the  
13                 Certification annexed to this Order (which shall be retained by counsel to  
14                 the party so disclosing the Confidential Information and made available  
15                 for inspection by opposing counsel during the pendency or after the  
16                 termination of the action only upon good cause shown and upon order of  
17                 the Court) before being shown or given any Confidential Information, and  
18                 provided that if the party chooses a consultant or expert employed by the  
19                 opposing party or one of its competitors, the party shall notify the  
20                 opposing party, or designating non-party, before disclosing any  
21                 Confidential Information to that individual and shall give the opposing  
22                 party an opportunity to move for a protective order preventing or limiting  
23                 such disclosure;
  - 24             (e) any authors or recipients of the Confidential Information or a custodian;
  - 25             (f) the Court, court personnel, and court reporters; and
  - 26             (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall  
27                 sign the Certification before being shown a confidential document.
- 28         Confidential Information may be disclosed to a witness who will not sign

the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

8       5.     Except with the prior written consent of the other parties, or upon prior order of  
9     this Court obtained after notice to opposing counsel, Highly Confidential Information shall be  
10    treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except  
11    that it shall not be disclosed to individual parties or directors, officers or employees of a party, or  
12    to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13           6. Any persons receiving Confidential Information or Highly Confidential  
14 Information shall not reveal or discuss such information to or with any person who is not entitled  
15 to receive such information, except as set forth herein. If a party or any of its representatives,  
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential  
17 Information to persons who are not authorized to use or possess such material, the party shall  
18 provide immediate written notice of the disclosure to the party whose material was inadvertently  
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential  
20 Information is being used or possessed by a person not authorized to use or possess that material,  
21 regardless of how the material was disclosed or obtained by such person, the party shall provide  
22 immediate written notice of the unauthorized use or possession to the party whose material is  
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding  
24 such possible use or possession.

25        7. In connection with discovery proceedings as to which a party submits Confidential  
26 Information or Highly Confidential Information, all documents and chamber copies containing  
27 Confidential Information or Highly Confidential Information which are submitted to the Court  
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If  
2 Confidential Information or Highly Confidential Information is included in the first page attached  
3 to the outside of the envelopes, it may be deleted from the outside copy. The word  
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the  
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential  
7 Information and is not to be opened or the contents revealed, except by Order of the  
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential  
10 Information documents or discovery materials produced by a non-party by providing written  
11 notice to all parties of the relevant document numbers or other identification within thirty (30)  
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for  
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be  
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others  
15 without restriction any information designated by that party or nonparty as Confidential  
16 Information or Highly Confidential Information, although a document may lose its confidential  
17 status if it is made public. If a party produces materials designated Confidential Information or  
18 Highly Confidential Information in compliance with this Order, that production shall be deemed  
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,  
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such  
22 party may at any time give written notice to the party or non-party who designated the material.  
23 The party or non-party who designated the material shall have twenty (20) days from the receipt  
24 of such written notice to apply to the Court for an order designating the material as confidential.  
25 The party or non-party seeking the order has the burden of establishing that the document is  
26 entitled to protection.

27

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1       10. Notwithstanding any challenge to the designation of material as Confidential  
2 Information or Highly Confidential Information, all documents shall be treated as such and shall  
3 be subject to the provisions hereof unless and until one of the following occurs:

- 4             (a) the party or non-party who claims that the material is Confidential  
5 Information or Highly Confidential Information withdraws such  
6 designation in writing; or  
7             (b) the party or non-party who claims that the material is Confidential  
8 Information or Highly Confidential Information fails to apply to the Court  
9 for an order designating the material confidential within the time period  
10 specified above after receipt of a written challenge to such designation; or  
11             (c) the Court rules the material is not Confidential Information or Highly  
12 Confidential Information.

13       11. All provisions of this Order restricting the communication or use of Confidential  
14 Information or Highly Confidential Information shall continue to be binding after the conclusion  
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the  
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)  
17 days either (a) return such documents to counsel for the party or non-party who provided such  
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly  
19 Confidential Information is returned or destroyed, the receiving party must submit a written  
20 certification to the producing party (and, if not the same person or entity, to the designating party)  
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential  
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not  
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Confidential Information or Highly Confidential Information.  
25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,  
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or  
 2 Highly Confidential Information remain subject to this Stipulated Protective Order. The  
 3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and  
 4 defenses in this action, with or without prejudice; and (2) final judgment herein after the  
 5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 6 including the time limits for filing any motions or applications for extension of time pursuant to  
 7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce  
 8 the terms of this Order.

9       12. Nothing herein shall be deemed to waive any applicable privilege or work product  
 10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
 11 protected by privilege or work product protection. Any witness or other person, firm or entity  
 12 from which discovery is sought may be informed of and may obtain the protection of this Order  
 13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition  
 14 or similar proceeding.

15       13. In the event that any Confidential Information or Highly Confidential Information  
 16 is inadvertently produced without such designation, the party or non-party that inadvertently  
 17 produced the information without designation shall give written notice of such inadvertent  
 18 production promptly after the party or non-party discovers the inadvertent failure to designate  
 19 (but no later than fourteen (14) calendar days after the party or non-party discovers the  
 20 inadvertent failure to designate), together with a further copy of the subject information  
 21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production  
 22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the  
 23 information that was inadvertently produced without designation shall promptly destroy the  
 24 inadvertently produced information and all copies thereof, or, at the expense of the producing  
 25 party or non-party, return such together with all copies of such information to counsel for the  
 26 producing party and shall retain only the newly-produced versions of that information that are  
 27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not  
 28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section  
2 14 below.

3       14. In the event that any party or non-party inadvertently produces information that is  
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent  
5 Production Material"), the following shall apply:

6           (a) Such inadvertent production or disclosure shall in no way prejudice or  
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney  
8 work product protection, or other applicable protection in this case or any other federal or state  
9 proceeding, provided that the producing party shall notify the receiving party in writing of such  
10 protection or privilege promptly after the producing party discovers such materials have been  
11 inadvertently produced.

12           (b) If a claim of inadvertent production is made, pursuant to this Stipulated  
13 Protective Order, with respect to discovery material then in the custody of another party, that  
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent  
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent  
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the  
17 producing party, or destroy all such claimed Inadvertent Production Material (including  
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the  
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly  
20 authorizing such use.

21           (c) A party may move the Court for an order compelling production of the  
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The  
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact  
24 or circumstance of the inadvertent production. The producing party retains the burden of  
25 establishing the privileged or protected nature of any inadvertently disclosed or produced  
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall  
27 be treated in accordance with Paragraph 14(b) above.

28

9        15. The parties agree that should the production of source code become necessary,  
10 they will need to amend or supplement the terms of this Order. To the extent production of  
11 source code becomes necessary in this case, the parties will work expeditiously to propose  
12 amendments to this Order to cover any production of source code.

13        16. If a party is served with a subpoena or a court order issued in other litigation that  
14 compels disclosure of any Confidential Information or Highly Confidential Information, the  
15 receiving party must:

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
23 the designating party whose Confidential Information or Highly Confidential Information may be  
24 affected.

If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these  
2 provisions should be construed as authorizing or encouraging a receiving party in this action to  
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-  
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”  
7 Such information produced by non-parties in connection with this litigation is protected by the  
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to  
11 produce a non-party’s confidential information in its possession, and the party is subject to an  
12 agreement with the non-party not to produce the non-party’s confidential information, then the  
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party  
15 that some or all of the information requested is subject to a confidentiality agreement with a non-  
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated  
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-  
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court  
23 within 28 days of receiving the notice and accompanying information, the receiving party may  
24 produce the non-party’s confidential information responsive to the discovery request. If the non-  
25 party timely seeks a protective order, the receiving party shall not produce any information in its  
26 possession or control that is subject to the confidentiality agreement with the non-party before a  
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the  
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1 burden and expense of seeking protection in this Court of its Confidential Information or Highly  
2 Confidential Information.

3        18. Nothing in this Stipulated Protective Order shall be construed to preclude any  
4 party from asserting in good faith that certain Confidential Information or Highly Confidential  
5 Information requires additional protections. The parties shall meet and confer to agree upon the  
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party  
7 waives any right it otherwise would have to object to disclosing or producing any information or  
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives  
9 any right to object on any ground to use in evidence of any of the material covered by this  
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any  
11 person to seek its modification by the Court in the future.

## **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly  
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other  
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,  
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those  
17 Rules.

18        19. A party that files with the Court, or seeks to use at trial, materials designated as  
19 Confidential Information or Highly Confidential Information, and who seeks to have the record  
20 containing such information sealed, shall submit to the Court a motion or an application to seal,  
21 pursuant to California Rule of Court 2.551.

22        20. A party that files with the Court, or seeks to use at trial, materials designated as  
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who  
24 does not seek to have the record containing such information sealed, shall comply with either of  
25 the following requirements:

26 (a) At least ten (10) business days prior to the filing or use of the Confidential  
27 Information or Highly Confidential Information, the submitting party shall  
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information  
2 pursuant to this Order, of the submitting party's intention to file or use the  
3 Confidential Information or Highly Confidential Information, including  
4 specific identification of the Confidential Information or Highly  
5 Confidential Information. Any affected party or non-party may then file a  
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or  
8 Highly Confidential Information, the submitting party shall submit the  
9 materials pursuant to the lodging-under-seal provision of California Rule of  
10 Court 2.551(d). Any affected party or non-party may then file a motion to  
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)  
12 business days after such lodging. Documents lodged pursuant to California  
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall  
14 be unsealed upon expiration of ten (10) business days, absent the filing of a  
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or  
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)  
18 shall contain sufficient particularity with respect to the particular Confidential Information or  
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings  
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22  
23 DATED: \_\_\_\_\_, 2016

24 **PERKINS COIE LLP**

25 By:

26 Julie E. Schwartz

27 *Attorneys for Defendant  
Facebook, Inc.*

1 DATED: \_\_\_\_\_, 2016

BIRNBAUM & GODKIN, LLP

2

3 By: \_\_\_\_\_

4 David Godkin

5

6 Attorneys for Plaintiff  
7 SIX4THREE, LLC

8

9 IT IS SO ORDERED.

10

DATED: 10/24, 2016

  
11 JUDGE OF THE SUPERIOR COURT

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## **CERTIFICATION**

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on \_\_\_\_\_, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 (“Order”). I have been given a copy of that Order and read it.

7 I agree to be bound by the Order and I understand and acknowledge that failure to so  
8 comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal  
9 the Confidential Information or Highly Confidential Information to anyone, except as allowed by  
10 the Order. I will maintain all such Confidential Information or Highly Confidential Information,  
11 including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent  
12 unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will  
13 return the Confidential Information or Highly Confidential Information, including copies, notes,  
14 or other transcriptions made therefrom, to the counsel who provided me with the Confidential  
15 Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San  
16 Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement  
17 proceedings occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ located at the address of  
19 \_\_\_\_\_ as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated Protective  
21 Order.

22 I declare under penalty of perjury that the foregoing is true and correct and that this  
23 certificate is executed this \_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

**Phone:**